

FEDERAL DEBT COLLECTION PROCESS

1 REFERRAL FROM CLIENT AGENCY

- 1.1 Review CCLR provided by client agency.
- 1.2 Immediately prepare acknowledgment, deficiency or declination letter to agency.

Reasons for deficiency or declination:

- 1.2.1 Referral made beyond statute of limitations
- 1.2.2 Debtor does not reside in district
- 1.2.3 CCLR not provided
- 1.2.4 Debtor's current residence address not provided
- 1.2.5 Current credit data not provided
- 1.2.6 Credit data provided indicates no prospect of effecting enforced collection
- 1.2.7 Referral not accompanied by summary or supporting documentation of actions already taken by agency to enforce collection
- 1.2.8 CCLR inadequate for any other reason (must be identified and explained in letter to agency)
- 1.2.9 Supporting documentation deficient (no Certificate of Indebtedness)
- 1.2.10 Claim lacks litigative merit
- 1.2.11 Costs to be incurred through litigation exceed amount of debt

2 PREJUDGMENT DEMAND

- 2.1 Send Demand Letter with address correction requested.

3 RESPONSE FROM DEBTOR PRIOR TO FILING SUIT

- 3.1 Unless the debtor pays the full amount of the debt, the debtor shall complete and sign FORM

OBD-500, Financial Statement. (The ADCM system need not generate this form.)¹

- 3.2 Debtor shall be required to execute a Consent Judgment and Waiver of Service. The judgment and the waiver shall be filed immediately with the Court. The Assistant US Attorney (AUSA) shall sign the Complaint for filing with the Court, as necessary.
- 3.3 Claim shall remain in prejudgment status only in those instances where debtor agrees to pay the debt in full within 30 days and executes a Consent Judgment and Waiver of Service with the understanding that it will be filed in court if full payment is not received within the 30 days.

4 FILING SUIT

- 4.1 If the debtor has not responded to the initial demand letter within 8-10 working days, a Complaint shall be filed.

5 SERVICE OF SUMMONS AND COMPLAINT BY MAIL (OPTIONAL)

- 5.1 Mail copy of Summons and Complaint, together with two copies of the Notice of Lawsuit and Request for Waiver of Service of Summons, a self-addressed postage prepaid return envelope, and a certificate that the aforesated documents have been mailed.
- 5.2 Debtor must return before 30-day deadline (60 days for foreign country addressee).
- 5.3 Use automated tickler system to ensure follow up.

6 ACKNOWLEDGMENT OF SERVICE BY MAIL RETURNED BY DEBTOR

- 6.1 Deadline 60 days from date waiver form is mailed to the debtor (90 days for foreign country addressee).
- 6.2 If debtor fails to file answer within 60 (or 90) days, a Declaration, Request for Default, Bill of Costs and a Default Judgment shall be filed with the Court on the day after the deadline date.
- 6.3 If debtor communicates desire to enter into an installment repayment plan within the 60 (or 90) day period:
 - 6.3.1 Debtor must complete and sign FORM OBD-500, Financial Statement.
 - 6.3.2 If installment repayment plan is justified, the debtor shall be required to execute a Consent Judgment and that judgment entered immediately with the Court.

¹ Unless otherwise stated, all forms shall be produced by the ADCM System.

7 SERVICE OF SUMMONS AND COMPLAINT BY PERSONAL DELIVERY (ALTERNATIVE TO SERVICE BY MAIL OR MANDATORY IF SERVICE BY MAIL UNSUCCESSFUL)

- 7.1 Prepare US Marshals Service Form 285 (The ADCM system need not generate this form) or generate a request for a private process server.
- 7.2 Deliver to US Marshal or process server with Summons and Complaint for personal service.
- 7.3 A deadline of 25 days from date of service shall be entered into the automated tickler system.
- 7.4 If debtor fails to file an answer within 20 days:
 - 7.4.1 Declaration, Request for Default, Bill of Costs and a Default Judgment shall be filed with the Court on the deadline date.
 - 7.4.2 Default Judgment amount should be equal to principal amount of the debt and all prejudgment interest and administrative costs payable to the date of judgment.

8 COMPLETION OF SERVICE

- 8.1 The deadline for completion of service on the debtor is 120 days after the filing of the complaint with the Court.
- 8.2 Set automated tickle for 90 days from filing of complaint.
- 8.3 If service is not complete after 90 days, file notice of motion and declaration in support of request for additional time to serve.

9 DEBTOR FILES AN ANSWER TO COMPLAINT

- 9.1 The matter will go forward into litigation of the merits of the claim.
- 9.2 Subsequent to filing an answer, debtor may wish to enter into a Consent to Judgment. In this event:
 - 9.2.1 AUSA shall require as a precondition to consent judgment that debtor submit FORM OBD-500, Financial Statement.

**** * POSTJUDGMENT DEBT COLLECTION ACTIVITY * ****

10 PERFECTING THE JUDGMENT

- 10.1 Upon entry of the Judgment (default, consent, court determination or referral from another district), action shall be taken immediately to perfect the judgment as a lien under Federal law.
- 10.2 An attested Abstract of Judgment must be filed for civil judgments. A Notice of Lien must be filed for criminal judgments.
- 10.3 Special care should be taken to perfect the judgment as a lien in county in which debtor resides as well as any other county in which the debtor owns or may own real property. An additional filing is normally needed to perfect a criminal judgment as a lien against the debtor's personal property.
- 10.4 Liens on Federal civil and criminal judgment are valid for 20 years. The lien on a civil judgment may be renewed for an additional 20 years.

11 NOTICE OF ENTRY OF JUDGMENT TO CLIENT AGENCY

- 11.1 Client agency shall be notified in writing of the entry of the judgment.
- 11.2 Copies of the judgments shall be provided to the client agencies.

12 POSTJUDGMENT DEMAND

- 12.1 Following expiration of ten-day appeal period, a letter shall be mailed to the debtor demanding payment in full within a certain time.
- 12.2 Period of time not to exceed 30 days.
- 12.3 Copy of the Judgment shall be included.
- 12.4 Date by which full payment should be made shall be entered into tickler system.
- 12.5 If no response from debtor within specified period of time, enforced collection proceedings shall be immediately initiated.

13 DEBTOR RESPONDS TO POSTJUDGMENT DEMAND

- 13.1 Debtor may respond within time period and offer to make installment repayments to satisfy the judgment.
- 13.2 Debtor shall be required to complete and sign a FORM OBD-500, Financial Statement.

- 13.3 Under no circumstances should the terms of an installment repayment plan be discussed prior to receiving a completed Financial Statement.
- 13.4 Obtain from review of Financial Statement the maximum monthly payment amount in order to liquidate the judgment at the earliest possible date.
- 13.5 A credit report or public record information should be obtained to verify the information provided by the debtor.

14 INSTALLMENT REPAYMENT PLANS

- 14.1 In addition to conditions described in Section 13 above, the following shall occur:
 - 14.1.1 All installment repayment plans shall be in writing. Each plan should provide for the entire judgment amount, with interest and court costs, to become immediately due and payable upon default on the terms and conditions of the plan.
 - 14.1.2 Monthly payments shall always be as large as debtor is financially able to pay, with a minimum of \$60 per month. (Payment of less than \$60 shall be reviewed and approved by the AUSA responsible for debt collection).
 - 14.1.3 Update financial statements every six months if possible, not less than once a year.
 - 14.1.4 Judgments in paying status shall be retained by the US Attorneys Office (USAOs) or private counsel until fully satisfied.

15 DEFAULT ON INSTALLMENT REPAYMENT PLAN

- 15.1 "Default" is defined as debtor's failure to make a payment within five days of payment due date.
- 15.2 On the fifth day following the payment due date, if payment has not been received, a default letter will be sent to the debtor from the NCIF, as well as a notice to the USAO or private counsel handling the case.
- 15.3 If the payment is not received within ten days of the default notice, a summary report will be submitted to the collections manager. At this time, immediate steps shall be taken to initiate enforced collection proceedings.

16 ENFORCED COLLECTION PROCEEDINGS

- 16.1 Shall be undertaken when debtor fails to respond to the postjudgment demand letter or to cure a default on established repayment plan.
- 16.2 Full use should be made of the enforced collection remedies available to the United States

under the Federal Debt Collection Procedures Act (FDCPA).

- 16.3 Financial Litigation Unit (FLU) personnel should always consult with the AUSA responsible for the FLU concerning the appropriateness and timeliness of any postjudgment remedies to be pursued.

17 SUPPLEMENTAL PROCEEDINGS

- 17.1 If written interrogatories are not used, discovery may be conducted under the Federal Rules of Civil Procedure requiring the debtor and others to appear for depositions on the debtor's assets and liabilities.
- 17.2 Debtor or others who may have information shall be served in accordance with Rule 45 of the Federal Rules of Civil Procedure and the local rules of the district court, and be required to bring certain financial data.

18 WRITTEN INTERROGATORIES (OPTIONAL)

- 18.1 May be served upon the debtor to obtain the financial information needed to determine the most efficient and effective method of enforcing a judgment.
- 18.2 Should be served in accordance with Rule 5 of the Federal Rules of Civil Procedure and the local rules of the district court.
- 18.3 If debtor fails to answer, a Motion to Compel should be filed with the Court and served upon the debtor.
- 18.4 If debtor answers interrogatories, the answers shall be thoroughly reviewed and a determination made on how best to proceed to enforce the judgment.

19 ORDER TO SHOW CAUSE IN RE CONTEMPT

- 19.1 If debtor fails to appear for a deposition, an Order to Show Cause In Re Contempt should be scheduled before the Court.
- 19.2 If debtor appears in response to Order to Show Cause, a motion should be made for the imposition of a fine and a term of imprisonment, incarceration to be waived if debtor produces required financial information with five days.
- 19.3 If the debtor fails to appear, a motion should be made for the issuance of a bench warrant.

20 WRIT OF GARNISHMENT

- 20.1 Purpose of Writ of Garnishment is to obtain money and credits of the debtor which are in the possession, custody or control of some third party.
- 20.2 Garnishment of wages, bank accounts or other funds is provided for as a judgment enforcement remedy under the FDCPA.
- 20.3 Procedure for issuance of writ will generally be determined by local rule or practice.
- 20.4 Prepare Application for Writ of Continuing Garnishment, Writ of Continuing Garnishment, Instructions to Garnishee, Answer of Garnishee, Clerk's Notice of Postjudgment Proceedings, Certificates of Service.
- 20.5 After issuance of the Writ of Continuing Garnishment:
 - 20.5.1 Serve the garnishee pursuant to Rule 4.1 of the Federal Rules of Civil Procedure.
 - 20.5.2 Once the garnishee is served, serve the debtor pursuant to Rule 4.1 of the Federal Rules of Civil Procedure.
- 20.6 Appropriate deadline dates shall be entered into the tickler system for the garnishee's time to answer, the debtor's time to answer and entry of the Court's Order of Garnishment.
- 20.7 If the AUSA and the debtor agree to a voluntary wage assignment in lieu of garnishment of wages, a stipulated Order of Garnishment shall be filed for approval and entry by the Court.
- 20.8 Tickle for Annual Accounting Statement to debtor and garnishee.
- 20.9 After debt is paid in full or garnishment terminated, prepare and serve a Final Accounting.

21 OFFSET OF FEDERAL EMPLOYEE JUDGMENT DEBTOR SALARY

- 21.1 Section 124 of Public Law 97-276, 96 Stat. 1195-1196, provides that the indebtedness of any federal employee to the United States, as determined by a court of United States, may be collected in monthly installments, or at officially established regular pay period intervals, by deductions in reasonable amounts from the current pay account of the employee.
- 21.2 The following types of disposable pay are subject to Federal employee judgment debtor offset under Section 124.
 - 21.2.1 Base Pay
 - 21.2.2 Special Pay
 - 21.2.3 Incentive pay
 - 21.2.4 In case of employee not entitled to basic pay, other authorized pay

- 21.2.5 In case of an employee who retires, resigns, or whose employment ends for some other reason before collection of debt is completed, subsequent payments of any nature due the individual from the paying agency of US Treasury.
- 21.3 The maximum amount deducted for any period may not exceed 25% (or 15% in the case of active duty or retired military personnel) of the net disposable pay from which the deduction is made.
- 21.4 The minimum amount deducted for any period must equal at least 15% of the net disposable pay from which the deduction is made.
- 21.5 Letter used to initiate Section 124 offset must be addressed to the appropriate official of the employee's paying agency, and must enclose an attested copy of judgment. Copies of letter must be provided to:
 - 21.5.1 the creditor agency responsible for the claim
 - 21.5.2 the Office of General Counsel of the employee's paying agency
 - 21.5.3 the Federal employee judgment debtor.
- 21.6 Once initiated, offset shall not be lifted until the judgment is paid in full.
- 21.7 When FLU personnel are informed that a federal employee judgment debtor plans to separate from federal service and is entitled to payments from Retirement Fund, a completed Standard Form 2805 (the ADCM system need not generate this form) and two attested copies of the judgment should be submitted immediately to OPM.

22 EXECUTION ON REAL AND PERSONAL PROPERTY

- 22.1 If debtor's Financial Statement shows non-exempt property of a sufficient value to satisfy the judgment in full or significant part, a Writ of Execution may be issued under the FD CPA directing levy on the non-exempt property of the debtor and directing its sale for satisfaction of the judgment.
- 22.2 Personal and real property may be liquidated.
- 22.3 Prepare an Application for a Writ of Execution, Writ of Execution, Notice of Levy, Specification, Clerk's Notice of Postjudgment Proceedings and Certificates of Service.
- 22.4 In the event real property is to be liquidated, a preliminary title report should be obtained to determine feasibility.
- 22.5 Publish (real property) or post (personal property) notice of sale and serve on all affected persons.

22.6 Prepare and file Marshal's Report of Sale.

23 INSTALLMENT PAYMENT ORDER

23.1 If debtor's ability to pay can be documented but the income is not subject to garnishment, an installment payment order should be sought.

23.2 Serve Clerk's Notice of Postjudgment Proceedings, Declaration and Notice of Motion on debtor by certified mail.

23.3 Tickle for hearing date and entry of order.

***** SUSPENSION AND TERMINATION POSTJUDGMENT COLLECTION ACTION *****

24 SUSPENSION OF COLLECTION ACTION FOR CIVIL JUDGMENTS

24.1 When continued efforts towards obtaining a substantial sum through enforced collection proceedings on civil judgments are futile, yet future prospects for enforcing collection are such that the judgment cannot be considered permanently uncollectible, such judgments may be suspended.

24.2 When suspended, appropriate dates shall be entered into tickler system to ensure timely, periodic review.

24.3 Updated financial information should be obtained and a re-evaluation of debtor's ability to pay made at least once a year, or six months if situation is expected to improve in less than a year.

24.4 Generally, judgments should not be retained in a suspense status for more than two years.

24.5 If judgment remains uncollectible after two-year period, judgment should be returned to the agency for surveillance or closed as uncollectible.

25 SUSPENSION OF COLLECTION ACTION FOR CRIMINAL DEBTS

25.1 When continued efforts towards obtaining a substantial sum through enforced collection proceedings on criminal judgments are futile, such judgments must be suspended.

25.2 When suspended, appropriate dates shall be entered into the tickler system to ensure timely, periodic review.

25.3 The debtor's ability to pay should be re-evaluated periodically in accordance with guidelines provided at 3-12.310(d) of the US Attorneys' Manual (USAM).

25.4 The permissible reasons to suspend criminal debts are:

25.4.1 Defendant deported

25.4.2 Payment deferred by the Court

25.4.3 Enforcement stayed by the Court

25.4.4 Debtor has no ability to pay or the ability to make only nominal payments

25.4.5 Debtor cannot be located.

25.5 An application to remit uncollectible criminal fine judgments should be made when appropriate.

25.6 A code identifying the reason for suspension of the criminal judgment must be entered.

25.7 Criminal judgments may remain in suspense for the life of the judgment when appropriate.

**** * TERMINATION OF COLLECTION ACTION BY JUSTICE* ****

26 RETURN TO AGENCY FOR SURVEILLANCE

26.1 Civil judgments which are deemed presently uncollectible, but may have future collection potential, and meet the following criteria, may be returned to the agency for surveillance:

26.1.1 All other claims arising out of the same transaction have also been reduced to judgment

26.1.2 The civil judgment is presently uncollectible but has future collection potential, and the US Attorney is not in a better position than the client agency to keep the matter under surveillance

26.1.3 The US Attorney should be satisfied that the transfer will not adversely effect the chances of collection or the amount that will be collected

26.1.4 The agency must be provided complete information on any liens that have been perfected

26.1.5 The agency must be willing to accept the transfer and must understand that it is not authorized to undertake final settlement, reduction, or release of any unpaid balance without the authorization of the Department of Justice, and all judicial proceedings to enforce or release judgments are to be conducted by the US Attorney

26.1.6 The US Attorney should consider it unlikely that the judgment will be returned for further

proceedings.

- 26.2 If, subsequent to return, the debtor's financial situation improves or enforcement action becomes practical, the agency is obliged to re-refer the case to the US Attorney for legal action.
- 26.3 Once judgment is returned to the agency for surveillance, the collection record should be closed.

27 CLOSING CIVIL JUDGMENT CASES AS UNCOLLECTIBLE

- 27.1 When closing civil money judgments as uncollectible, note the following:
 - 27.1.1 Closing a case and writing off the unpaid balance as uncollectible has no effect upon the judgment's validity.
 - 27.1.2 The case can be reopened at any time if there is a reason to do so, and therefore the judgment debtor should not be informed of such decision.

28 CLOSING JUDGMENT CASES AS PAID IN FULL OR COMPROMISED

- 28.1 When a judgment has been collected in full or when the terms of a compromise agreement have been met, appropriate action should be taken to ensure the following:
 - 28.1.1 A Satisfaction of Judgment, Release or any other necessary documents are filed with the Court(s) of record.
 - 28.1.2 Judgment liens of record are satisfied or released.
 - 28.1.3 Once steps 1 and 2 above are done, the debtor and the referring agency shall be promptly notified that the judgment has been satisfied in full or in part and provided with a copy of the Satisfaction of Judgment or Release.
 - 28.1.4 The collection record shall then be closed.

***** PAYMENT PROCESSING *****

29 RECEIPT OF PAYMENTS

- 29.1 The NCIF is responsible for ensuring that all payments received are properly handled and processed.

30 RECEIPT OF CASH OR CURRENCY

- 30.1 Debtors should be advised to make payments by check or other negotiable instrument (such as a money order) payable to "US Department of Justice." Debtors should send all payments through the Direct Deposit (lockbox) System.
- 30.2 If debtor pays in cash or currency, the payment must be accepted and immediately converted to a check or money order, preferably a postal money order made payable to "US Department of Justice."
- 30.3 For any payments directly received, follow system user guide instruction to generate a deposit listing and mail directly to the DOJ lockbox.

31 SECURITY OF CASH WHICH CANNOT BE CONVERTED IMMEDIATELY

- 31.1 Such cash must be kept in a secure area and must be logged into and out of that area. The FLU must use safes, locked file drawers, and other appropriate security measures, for this purpose.

32 POSTING PAYMENTS

- 32.1 All payments received shall be posted daily.

33 DIRECT DEPOSIT OF PAYMENTS

- 33.1 All payments received shall be deposited through the Direct Deposit (lock box) System in accordance with the procedures set forth in Order OBD 2110.

34 APPLICATION OF PAYMENTS

- 34.1 The "US Rule" shall be followed in applying payments on all civil debts and judgments.
- 34.2 Under the US Rule, a partial payment is credited first to court costs and fees, second to accrued interest, and the balance (if any) to principal. (Subsequent interest then accrues on the remaining principal, computed from the date of the partial payment).
- 34.3 The US Rule shall also be followed in applying any payments received prior to entry of a judgment unless the debtor's obligation expressly provides otherwise.
- 34.4 Payments on all criminal judgments shall be applied as specified by statute.
 - 34.4.1 Payments on criminal debts shall be applied in the following order: special assessment,

restitution (plus interest), fines (plus interest), court costs, penalties, and attorney fees.

***** INTEREST RECOVERABLE BY THE GOVERNMENT *****

35 PREJUDGMENT INTEREST

- 35.1 Interest should be demanded in every case in which the collection of interest is appropriate.
- 35.2 When there is no contract or instrument which contains a provision for interest, the rate of interest to be recovered for delayed payment of a civil obligation should be determined by the interest provision of the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, and the Federal Claims Collection Standards.
- 35.3 When interest is provided for by note or contract, the complaint should pray for prejudgment interest at the rate specified therein. When money is paid out or property is delivered as a result of fraud or deceit, interest should be demanded from the date the debtor received the benefit of the funds or property. In other cases, interest should be collected from the date of notice of overpayment, or the first demand for repayment.
- 35.4 The above does not apply when a statute, regulation, agreement or contract prohibits charging interest or explicitly fixes the rate of interest.

36 POSTJUDGMENT INTEREST

- 36.1 Postjudgment interest should be affirmatively and specifically provided for in the judgment, at the statutory rate which is tied to sales of Treasury bills by the Secretary of the Treasury.
- 36.2 Civil judgments in favor of the United States bear interest as allowed by law, whether or not interest has been expressly provided for in the judgment.
- 36.3 Postjudgment interest accrues on the entire amount of the civil judgment from the date of entry, including any prejudgment interest awarded therein.
- 36.4 Postjudgment interest is computed daily to the date of payment and compounded on civil judgments annually.
- 36.5 Criminal judgments bear interest as allowed by the law in effect on the date that the criminal offense was committed.
 - 36.5.1 Interest accrues on criminal fines, on restitution imposed for offenses committed on or after April 24, 1996 or as directed by the Court in a restitution order for an offense committed before April 24, 1996.
 - 36.5.2 Criminal fines and restitution accrue simple interest. The start dates for interest and the

methods for computing interest vary depending on the law that was/is in effect on the date of the criminal offense.

- 36.6 The interest rate in effect on the date of judgment remains the interest rate on the debt for the life of the judgment.

37 INTEREST COMPUTATIONS

- 37.1 Interest on civil money judgments awarded in the US District Court on or after October 1, 1982, must also be compounded annually.
- 37.2 Interest on criminal money judgments is not compounded.

*** * TRANSFERS AND ASSISTS * ***

38 TRANSFERS

- 38.1 When a debtor relocates to another district, the FLU may transfer the case to the US Attorney's Office where the debtor resides for collection.
- 38.2 Cases should not be transferred when the debtor is incarcerated or when the availability of nationwide enforcement remedies make collection of the debt feasible.
- 38.3 The NCIF will promptly notify the referring agency of the transfer.

39 ASSISTS

- 39.1 Instances will arise when a FLU will require the assistance of another US Attorney's Office to collect a judgment debt. A request for an "assist" should be made, for example, when:
- 39.1.1 There are multiple debtors on one debt and they reside in several districts; or
- 39.1.2 The principal debtor resides within the district but guarantors or sureties reside in another district.

40 SKIP TRACING

- 40.1 Claims should be received in the FLU ready for litigation. However, a limited amount of skip tracing, such as an occasional address verification prior to suit, may be appropriately

undertaken. Skip tracing may also be necessary if the debtor relocates once the claim is being handled by the FLU.

40.2 An extensive listing of skip tracing techniques is provided at USAM 11-9-120.210.